IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 473/1998
Reserved on: 20.4.2007
Date of decision 28.5.2007

P.K. Gupta and others. …Petitioners.

Versus

State Bank of India and others. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.Yes*

For the petitioners : **Mr. Dushyant Dadwal, Advocate.**

For the respondents : **Mr. K.D. Sood, Advocate.**

Rajiv Sharma, J.

By way of this petition following reliefs have been prayed for:-

i. **"Quashing Clause 12.1 of the Promotion Policy as amended from time to time as being illegal, arbitrary unconstitutional and void.**

ii. **Quashing Annexure PB and PC relating to the criteria adopted for short-listing candidates for being included in the zone of selection and further prohibiting and restraining the respondents from discriminating against officers who have been awarded a common gradation in the Appraisal Reports and annual Confidential Reports.**

iii. **Directing respondents to consider all officers within one criteria of gradation for being promoted from Middle Management Scale**

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?Yes

II to Middle Management Scale III and further prohibiting and restraining them from making classifications within classification as is being done by the respondents.

iv. **Directing the respondents to consider the petitioners for the interviews to be held on 20th July, 1998 for the purposes of promotions to be made to Middle Management Scale III.**

v. **Directing the respondents to follow the criteria laid down by the Hon'ble Supreme Court of India in *State Bank of India Vs. Kanshi Nath Kher* and others reported in (1996) 8 SC Cases 762.**

vi. **Directing the respondents to produce all records relating to the formulation of the policy for promotion and formulation of the criteria as also the preparation of the list of zone of selection for the current year relating to the petitioners as also to the other officers.**

vii. **Any other writ, order or direction deemed just and proper by this Hon'ble Court in the light of facts and circumstances of the case mentioned here-in-above may also be passed in favour of the petitioners.**

viii. **The respondents may be burdened with the cost of this petition throughout."**

The brief facts necessary for the adjudication of this petition are that the respondents-bank had issued Supervising Promotion Policy with regard to promotion from MMG scale-II to MMG scale-III vide Annexure PB dated 25th March, 1991. Para 2.3 of the memorandum prescribes the eligibility criteria. Para 9.1 of the memorandum lays down the eligibility criteria. It is stated therein that the officers in MMG Scale-II who fulfill any of the following criteria will be eligible for consideration for promotion to MMG Scale III:

i) 3 years' service in MMG Scale II with both parts of CAIIB.

ii) 4 years' service in MMG Scale II with Part I of CAIIB.

iii) 5 years' service in MMG Scale II without CAIIB qualification.

Para 10 of the memorandum deals with zone of consideration and zone of selection has been separately provided under para 12.1. Para 14.1 of the memorandum provides that the final merit list will be drawn after taking into consideration the total marks secured by the officer under various parameters. The cut-off mark will be determined by the actual number of vacancies, assessed at the time of declaring promotions and the officers securing marks equivalent to and above the cut-off mark will qualify for promotion. The marking system for promotion to MMG scale-III has been provided in Annexure-1 of memorandum dated 25th March, 1991 which is reproduced as under:

"PROMOTION TO MMG SCALE III

Parameter	**Max. marks**	**Weightage**
Performance (for last 6 years	**100**	**60**
Reporting System (ACRs/PAS Ratings) (for 5 years)	**30**	**20**
Interview & Assessment on Traits	**20**	**20**
		100
Minimum Qualifying standard	**55**	

Performance, Confidential Reports/PAS Ratings and CAIIB position to be assessed as on March 31, of the year of promotion."

Vide circular dated 11th February, 1995, the approximate number of vacancies available/likely to be available for promotion to Scale II and Scale III were 149 and 84 respectively. In pursuance to the judgment of

the Hon'ble Supreme Court, a memorandum was issued by the respondents-bank on 2nd August, 1997 whereby changes in promotion policy in respect of promotions to MMG Scale II and III were effected in the following manner:

> **"As per the current policy, Officers to be considered for promotion to MMG Scale III are required to complete 2 years of line assignment as Branch Managers or Divisional Managers of Divisions with budgetary responsibilities. In terms of the present promotion policy, officers who have partially completed the assignments or who are placed on the assignment positions, but are found suitable for promotion are placed under List 'B' and the promotions are released on their completing the line assignments. Such officers will continue to be under List 'B' and to this extent there will be no change in the present policy.**
>
> **Officers who have not completed rural/semi-urban assignments for a period of 3 years (which includes 2 years of rural service already completed in JMG Scale 1 before promotion as MMGS (() as laid down, but are found suitable for promotion will also be placed under List 'B' and their promotions will be released only on their completing the rural/semi-urban assignment. They would be placed in seniority below their respective immediate senior in MMG Scale II.**
>
> **In both the above cases, the effective date of promotion will remain the same as for other successful candidates i.e. those in List 'A'."**

The memorandum was also issued on 19th August, 1997 under the subject Annual Assignment Report Forms (Reporting Structure). The respondents-bank had initiated the process for filling up the posts of MMG Scale-III in the year 1998. The petitioners' names did not appear in the zone of selection and consequently they were not called for interviews, which were to take place on 20th July, 1998. The petitioners made representation to the Chief General Manager on 8th July, 1998 respectively.

Mr. Dushyant Dadwal, Advocate appearing on behalf the petitioners has submitted that the procedure prescribed vide Annexures PB, PC, R-1, R-2 and R-3 is violative of Articles 14 and 16 of the Constitution of India. Mr. Dadwal has further submitted that the effect of issuance of memorandums/circulars from time to time governing the promotion from MMG Scale-II to MMG Scale-II has resulted in classifications within classification which is not permissible under law.

Mr. K.D. Sood, Advocate appearing on behalf of the respondent-bank has stated that the memorandums/circulars issued from time to time governing the promotions of the MMG Scale-II to MMG Scale-III are in conformity of Articles 14 and 16 of the Constitution of India and necessary amendments have also been carried out after the judgment of the Hon'ble supreme Court.

I have heard the parties and perused the record.

Admittedly the post in question is a selection post where the emphasis is only on merit. The detailed eligibility criteria has been prescribed under para 9.1 of Annexure PB dated 25th March, 1991. It is provided in para 10 that all officers in MMG Scale-II, who fulfill the service eligibility criteria will constitute the zone of consideration for promotion to MMG Scale-II and all Officers in MMG Scale-II who form the zone of

consideration will be evaluated on parameters (given in Annexure I) on the basis of the marks secured by the officers. The number of officers called will be equal to 1 ½ times and the number of vacancies will constitute the zone of selection as per para 12.1. In Annexure A-1, the detailed parameters, as quoted, have been given. The Departmental Promotion Committee has to see the performance of those candidates, who after falling in the zone of consideration, fall in the zone of selection for the last six years. Similarly, in sequel to judgment of the Hon'ble Supreme Court, necessary memorandum has been issued whereby the promotion policy has been modified on 2nd August, 1997.

Mr. K.D. Sood, Advocate had laid emphasis on Annexures R-1, R-2 and R-3 and on the basis of the same has submitted that the procedure adopted by the bank for filling up the posts of MMG Scale-III is evolved to get meritorious candidates by way of promotion. It has come in the reply of the respondents-bank that the petitioners did not fall in the zone of selection and thus could not be called for interview. The respondents-bank has also stated in its reply that the directions of the Hon'ble Supreme Court in ***State Bank of India Vs. Kashinath*** in respect of Annual Appraisal Reports are being followed. Respondents-bank has also justified the procedure adopted for Annual Appraisal Reports. Mr. K.D. Sood, Advocate has submitted that the method adopted by the bank with regard to maintaining Annual Appraisal Reports excludes the discretion of the authorities while assessing the performance of a particular officer.

The procedure as laid down in Annexures R-1, R-2 and R-3 cannot be faulted with in any manner since the same applies to all the employees uniformly. The endeavour of the bank on the basis of Annexures PB, PC, R-1, R-2 and R-3 is to get the most meritorious candidates for MMG Scale-III. The petitioners had not fallen in the zone of selection and on

that basis they cannot urge that the memorandums are unconstitutional. Mr. D. Dadwal, Advocate has failed to point out that in what manner Annexures PB, PC, R-1, R-2 and R-3 are violative of Articles 14 and 16 of the Constitution of India. The Bank had already carried out the necessary amendments in the promotion policy on the basis of the directions of the Hon'ble Supreme Court in State Bank of India Vs. Kashinath case in respect of Annual Appraisal Reports.

The petitioners have themselves permitted to be adjudged on the basis of the existing memorandums/circulars and once they did not fall in the zone of consideration they cannot find fault with the promotion policy. The petitioners have participated in the process for being considered for promotion to MMG Scale-III. It is only when they did not succeed they approached this Court assailing the memorandums/circulars issued by the Bank from time to time. It is settled law by now that the candidates after participating in the selection process cannot turn around and challenge the same being faulty. In other words, the candidates cannot approbate and reprobate. The Hon'ble Supreme Court has held in ***Om Prakash Shukla Vs. Akhilesh Kumar Shukla*** 1986 (Supp) SCC 285 as under:

> **"Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.**

Similarly, in ***Madan Lal and others Vs. State of J&K and others***, 1995 (3) SCC 486, the Hon'ble Supreme Court has opined as under:

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus, the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla V. Akhilesh Kumar Shukla* it has been clearly laid down by a Bench of there learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

The Hon'ble Supreme Court in ***Union of India and another V. N. Chandrasekharan and others*** (1998) 3 SCC 694 has held as under:

"We have considered the rival submissions in the light of the facts presented before us. It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and

contenting that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report. ”

The upshot of the above discussion is that the method adopted by the respondents-bank for filling up the posts of MMG Scale III from MMG Scale-II cannot be faulted with. The eligibility criteria, zone of consideration and zone of selection are in conformity with Article 14 of the Constitution of India. There is no classification within classification as submitted by Mr. Dushyant Dadwal since the post in question i.e. MMG Scale –III is a selection post.

Consequently there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

May 28, 2007
Awasthi